

AMENDED IN ASSEMBLY AUGUST 9, 2004  
AMENDED IN ASSEMBLY SEPTEMBER 4, 2003  
AMENDED IN SENATE APRIL 10, 2003

**SENATE BILL**

**No. 730**

**Introduced by Senator Burton**

February 21, 2003

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~~An act to amend Sections 1773 and 1773.5 of the Labor Code, relating to prevailing wages. An act to amend Section 7501 of the Family Code, relating to child custody.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 730, as amended, Burton. ~~Prevailing rate of per diem wages; determinations.~~ *Child custody.*

*Existing law provides that a parent entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a residence relocation that would prejudice the rights or welfare of the child.*

*This bill would revise that provision to state that a parent entitled to the custody of a child has a presumptive right affecting the burden or proof to change the residence of the child. The bill would state that the Legislature recognizes specified public policy considerations. The bill would require a court to preserve the established mode of custody, whether by temporary, contingent, or permanent order, or by de facto arrangement, unless the noncustodial parent makes a specified showing. The bill would also authorize a court to order a change in custody only if the presumption in favor of stability and continuity in the child's primary custodial relationship and the detriment to the child of leaving the current custodial household are outweighed by the benefits*

*to the child of not relocating with the custodial parent, as specified. The bill would prohibit a court from issuing a conditional order, as specified.*

~~(1) Existing law generally requires the payment of the prevailing rate of per diem wages and the prevailing rate for holiday and overtime work to employees employed on public works projects that cost more than \$1,000. Existing law requires the Director of Industrial Relations to determine these wage rates and to provide these wage rates to an awarding body, as defined, that requests them.~~

~~This bill would require the director to provide these wage rates to an awarding body within 120 days of a request for the rates, and would require that any appeal of a wage rate determination be decided within 30 days of the appeal. This bill would also require the director to maintain a log, as a public record, of these determination requests and appeals, as provided.~~

~~(2) Existing law authorizes the director to establish rules and regulations for determining the existence of public works for purposes of coverage by the prevailing wage laws.~~

~~This bill would require the director, within a specified time period, to determine whether a specific project or type of work is, or is not, a public work under specified provisions of law that is subject to coverage under prevailing wage laws. It would require the director, within a specified time period, to decide an appeal of that determination, and would require the director to maintain a log of all requests for determination received and appeals submitted, including the dates applicable for the determination and appeal of a request.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1.—Section 1773 of the Labor Code is amended to~~  
 2     ~~SECTION 1. Section 7501 of the Family Code is amended to~~  
 3     ~~read:~~

4     ~~7501. (a) A parent entitled to the custody of a child has a~~  
 5     ~~presumptive right affecting the burden of proof to change the~~  
 6     ~~residence of the child, subject to the power of the court to restrain~~  
 7     ~~a removal that would prejudice the rights or welfare of the child.~~

8     ~~(b) (1) It is the intent of the Legislature to affirm the decision~~  
 9     ~~in In re Marriage of Burgess (1996) 13 Cal.4th 25 (Burgess), and~~  
 10    ~~to declare that ruling to be the public policy and law of this state.~~

1     (2) *The Legislature hereby reaffirms the Burgess decision by*  
2 *the amendments made to this section by the act adding this*  
3 *paragraph and recognizes all of the following:*

4     (A) *The goal of striving to keep the children's best interests*  
5 *paramount in all family arrangements.*

6     (B) *The importance of preserving the continuity and stability of*  
7 *the bonds established between a child and his or her parents.*

8     (C) *The detriment to a child of disruption of established*  
9 *patterns of care and emotional bonds with a primary caretaker.*

10    (D) *The reality of an increasingly mobile society.*

11    (3) *The Legislature further finds and declares that the recent*  
12 *Supreme Court decision in In re Marriage of LaMusga (2004) 32*  
13 *Cal.4th 1072 (LaMusga), did not adequately address all of the*  
14 *policies stated in the Burgess decision. It is therefore the intent of*  
15 *the Legislature to abrogate the decision in LaMusga and to provide*  
16 *clear guidance to courts deciding motions concerning relocation*  
17 *by the custodial parent with the child.*

18    (c) (1) *The court shall preserve the established mode of*  
19 *custody, whether by temporary, contingent, or permanent order, or*  
20 *by de facto arrangement, unless the noncustodial parent does both*  
21 *of the following:*

22    (A) *Makes an initial showing that, as a result of the relocation,*  
23 *the child will suffer detriment rendering it essential or expedient*  
24 *for the welfare of the child that there be a change.*

25    (B) *Makes a substantial showing of a significant change of*  
26 *circumstances, other than the actual relocation itself, that*  
27 *indicates that a different custodial arrangement would be in the*  
28 *child's best interests.*

29    (2) *A change in custody may be ordered only if the presumption*  
30 *in favor of stability and continuity in the child's primary custodial*  
31 *relationship and the detriment to the child of leaving the current*  
32 *custodial household are substantially outweighed by the benefits*  
33 *to the child of not relocating with the custodial parent. In*  
34 *determining whether a noncustodial parent who is seeking to*  
35 *restrain the relocation of the child or change custody has met his*  
36 *or her burden of proof, the court shall consider all relevant factors*  
37 *and shall at a minimum consider and state on the record each of*  
38 *the following:*

39    (A) *The age of the child.*

40    (B) *The child's community ties.*

1 (C) *The child's health and educational needs.*

2 (D) *The wishes of the child if the child is of sufficient age and*  
3 *capacity to reason so as to form an intelligent preference as to*  
4 *custody as provided in subdivision (a) of Section 3042.*

5 (E) *The nature of the child's existing contact with both parents,*  
6 *including de facto as well as de jure custody arrangements, and the*  
7 *interest in stability and continuity in the child's primary custodial*  
8 *relationship.*

9 (d) *The mere interference with any existing schedule of*  
10 *parenting time is not sufficient to restrain a relocation or to change*  
11 *custody.*

12 (e) *The court shall not issue a conditional order solely for the*  
13 *purpose of coercing the custodial parent into abandoning plans to*  
14 *relocate.*

15 read:

16 ~~1773. (a) (1) The body awarding any contract for public~~  
17 ~~work, or otherwise undertaking any public work, shall obtain the~~  
18 ~~general prevailing rate of per diem wages and the general~~  
19 ~~prevailing rate for holiday and overtime work in the locality in~~  
20 ~~which the public work is to be performed for each craft,~~  
21 ~~classification, or type of worker needed to execute the contract~~  
22 ~~from the Director of Industrial Relations. The holidays upon~~  
23 ~~which those rates shall be paid need not be specified by the~~  
24 ~~awarding body, but shall be all holidays recognized in the~~  
25 ~~applicable collective bargaining agreement. If the prevailing rate~~  
26 ~~is not based on a collectively bargained rate, the holidays upon~~  
27 ~~which the prevailing rate shall be paid shall be as provided in~~  
28 ~~Section 6700 of the Government Code.~~

29 (2) ~~In determining the rates, the Director of Industrial Relations~~  
30 ~~shall ascertain and consider the applicable wage rates established~~  
31 ~~by collective bargaining agreements and the rates that may have~~  
32 ~~been predetermined for federal public works, within the locality~~  
33 ~~and in the nearest labor market area. Where the rates do not~~  
34 ~~constitute the rates actually prevailing in the locality, the director~~  
35 ~~shall obtain and consider further data from the labor organizations~~  
36 ~~and employers or employer associations concerned, including the~~  
37 ~~recognized collective bargaining representatives for the particular~~  
38 ~~craft, classification, or type of work involved. The rate fixed for~~  
39 ~~each craft, classification, or type of work shall be not less than the~~  
40 ~~prevailing rate paid in the craft, classification, or type of work.~~

~~(3) If the director determines that the rate of prevailing wage for any craft, classification, or type of worker is the rate established by a collective bargaining agreement, the director may adopt that rate by reference as provided for in the collective bargaining agreement and that determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.~~

~~(b) (1) When an awarding body makes a request to obtain the prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work from the director, all of the following apply:~~

~~(A) The director shall make the determination of these rates within 120 days of the request.~~

~~(B) If the determination specified in subparagraph (A) is appealed, the director shall make a decision on that appeal within 30 days of the request for the appeal.~~

~~(2) The director shall provide notice to an awarding body to acknowledge that he or she has received a request for a determination or an appeal of a determination, which notice shall include the date by which the determination or appeal will be decided.~~

~~(3) The director shall maintain a log of all requests and appeals described in paragraph (1), which log is a public record, and specifies at least all of the following:~~

~~(A) The date that the awarding body made the request or appeal.~~

~~(B) The date upon which the decision on the request or appeal should have been decided.~~

~~(C) The date upon which the decision on the request or appeal was made.~~

~~SEC. 2.—Section 1773.5 of the Labor Code is amended to read:~~

~~1773.5.—(a) The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.~~

~~(b) The Director of Industrial Relations, within 60 days of receipt of a request for a determination, shall determine whether a specific project or type of work is, or is not, a public work under Sections 1720, 1720.2, 1720.3, 1720.4, and 1771 that is subject to coverage under prevailing wage laws. The director, within 30 days~~

1 ~~from the date of filing, shall decide an appeal of that~~  
2 ~~determination. The director shall issue written acknowledgement~~  
3 ~~of receipt of a request for a determination or an appeal, including~~  
4 ~~therein the date by which the determination shall be made or~~  
5 ~~appeal decided. The director shall maintain a log, which shall be~~  
6 ~~available as a public record, of all requests for determination~~  
7 ~~received and appeals submitted, including therein the dates~~  
8 ~~applicable for the determination and appeal of a request.~~

